IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.15 OF 2004
IN
APPEAL NO.652 OF 2003
IN
WRIT PETITION NO.1762 OF 2003

Hindoostan Crown Mills Siddhivinayak Kamgar Karmachari Sangarsh Sangatana and Others
...Petitioners

Vs.

Hindoostan Spinning & Weaving Mills Limited and Another
...Respondents

Mr.N.M.Ganguli, Adv. for the Petitioners

Mr.Cama, Adv. i/b. Federal & Rashmikant for the Respondents.

CORAM: A.S. AGUIAR,J.
DATED: 1ST OCTOBER,2004

P.C.

1. Heard learned Advocates for Petitioners and Respondents. The Petitioners pray that Respondents Nos.1 to 5 jointly and severally be punished for having committed contempt of this Court by breaching its orders dated 1st September, 2003 and 1st October, 2003. By order dated 1st September, 2003 the Division Bench of this Court (Coram: H.L.Gokhale and R.S.Mohite, JJ) accepted the undertaking given by Respondent no.1 to pay half of the amount equivalent to the closure compensation under Section 25-)(8) of the Industrial Disputes Act, 1947 to their employees by the end of September, 2003 and the remaining half within one month thereafter. The said

undertaking was accepted by the Court. By order dated 1st October, 2003 the Court granted the Respondents, extension of time to pay the entire balance amount by the end of November, 2003 on giving an undertaking not to seek further extension of time. The Court by its said order directed Counsel for the Respondents to furnish a list of the employees with details of payment made.

2. It is the contention of the Petitioners that the Respondents have committed breach of the undertaking given to the Court and of the Order dated 1st September, 2003 and 1st October, 2003 as they have failed to pay the second instalment of the remaining half of the amount by 30th November, 2003. Learned Counsel Mr. Cama on behalf of the Respondents states that the total amount payable by the Respondent no.1 under order dated 1st September, 2003 was Rs.349.63 crores which was to be paid in two equal instalments of Rs.175 lacs each. The entire first instalment was paid by Respondent no.1 by the end of October, 2003 in accordance with the order dated 1st October, 2003. In respect of the second instalment of Rs.175 lacs, Respondent no.1 paid Rs.61.75 lacs by the end of November, 2003. However, since Respondent no.1 was unable to pay balance amount of Rs.113.62 lacs, Respondent no.1 applied to the Court for grant of further time to pay the balance amount.

The Application is still pending.

3. Learned Counsel Mr. Cama for the respondent no.1 states that the Respondents have paid the entire balance amount of Rs.1,13,65,278/- on 10th September, 2004 in Court as permitted by this Court's orders dated 3rd September, 2004 and 10th September, 2004.

4. The grievance of the Petitioners is two fold:-

(1). That the Respondents have committed breach of the undertaking given to the Court by failing to deposit the balance amount within the stipulated period i.e. by 30th November, 2003.

AND

(2) That the Respondents have deliberately deposited the amount in Court instead of disbursing the amount directly to the employees. This according to the Petitioners is with a view to cause harassment to the employees and further delay payment being

made the employees.

5. This petition has been filed ostensibly to uphold the dignity of this Court and the binding force of its orders. Contempt of this Court would lie in the willful disobedience of its orders dated 1st September, 2003 and 1st October, 2003 and the undertaking given to the Court. It is the contention of learned Counsel for the Respondents that there has been no willful disobedience of this Court's orders. It was the inability of the Respondents to pay the said amount that was responsible for their failure to pay the entire balance amount within the stipulated period. In support of this Mr. Cama has referred to the facts set out in paragraphs 5(iii) and 6 to 8 of the Respondent's Affidavits dated 11th March, 2004 explaining the difficulties faced by the Company which was declared sick and in respect of which a scheme was being worked out for its rehabilitation by BIFR. The Petitioners do not deny these facts or that the Company was in fact declared sick and that steps for its rehabilitation were in progress. In fact it is the contention of the learned Counsel for the Respondents that the rehabilitation of the company was being forestalled by the Petitioners and that was one of the reasons for the delay on part of the Respondents in making payment as undertaken by

them and recorded in this Court's orders dated 1st September, 2003 and 1st October, 2003. There is no reason not to accept the explanation given by the Respondents in their Affidavits. The explanation seems plausible and sufficient enough to rebut any presumption of wilful disobedience of this Court's order. The Respondents have also tendered an unconditional apology for not having paid the amounts as directed by this Court. In view there of this Court does not find it necessary to take any action against Respondents for the perceived breach of its orders.

6. It is the grievance of the Petitioners that the Respondents have deposited the amount in Court instead of disbursing the amounts to the workers. Learned Advocate Mr. Ganguli for the workers has contended that this is deliberate act on the part of the Respondents to cause hardships to the workers. However, Advocate Ganguli has no objection to any direction being given to the Prothonotary returning the amount deposited in Court to the respondents Company and Respondent Company disbursing the amounts to the workers as per their dues within the shortest possible time frame, in any case, well in advance of the ensuring Dussera festival.

7. Prothonotary and Senior Master, High Court, Mumbai is directed to return the amount

deposited by the Respondents immediately on an application being made by the Respondents, which application will be made by Wednesday, 6th October, 2004. Immediately on receipt of the amount from the High Court, the Respondent No.1 Company will commence disbursing the money to the workers. The Respondents to ensure that the employees get their payment at the earliest, in any event before 'Dussera'. With the above order the Petition to stand disposed of.

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